LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
APR 17 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1277

EUGENE CHARLES RANDONO,
Petitioner,

v.

SHERIFF, CLARK COUNTY, NEVADA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of The State of Nevada

---

REPLY BRIEF FOR PETITIONER

GERALD S. ROURKE
Welch & Morgan
300 Farragut Building
900 17th Street, N.W.
Washington, D.C. 20006
Attorney for the Petitioner

THE CASILLAS PRESS, INC.—1717 K Street, N. W.—Washington, D. C.—223-1220

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1277

EUGENE CHARLES RANDONO,
Petitioner,

v.

SHERIFF, CLARK COUNTY, NEVADA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of The State of Nevada

---

REPLY BRIEF FOR PETITIONER

The brief for Respondent Sheriff, Clark County, Nevada, initially contends that no federal question is raised by the petition for certiorari herein, and that the Nevada Supreme Court decision rests on adequate state grounds. However, Respondent concedes that state law cannot validly be in conflict with the federal law on extradition. Under the circumstances, it is apparent that the petition herein raises the federal question whether the decision of the Nevada Supreme Court is in conflict with the federal extradition statute and the federal Constitutional rights of Petitioner.

Nowhere in its brief does the Respondent address the first question raised in the petition, that of probable cause under the Fourth Amendment for the extradition arrest of Petitioner. Yet in *Kirkland v. Preston*, 385 F.2d 670, 676, 128 U.S. App. D.C. 148 (1967), cited by Petitioner, the D. C. Circuit, sitting as the highest court of the District of Columbia to review the extradition actions of the chief executive of the District (385 F.2d at 672), stated the law as follows:

> "[D]evelopments since *Wolf* [*Wolf v. People of State of Colorado*, 338 U.S. 25 (1949)] and *Mapp* [*Mapp v. State of Ohio*, 367 U.S. 643 (1961)] have made it clear that what those cases applied to the states was the whole of the Fourth Amendment, thereby transmuting the federal standard of probable cause into a minimal and uniform requirement of a valid arrest by state officers." (Footnote citations omitted.) (385 F.2d at 674)

The Due Process questions referred to in the petition, and the question whether Petitioner is a fugitive from justice within the federal extradition statute, also clearly present genuine federal questions.

Respondent's brief claims that the Nevada Supreme Court decision rests on adequate state grounds but does not disclose what these state grounds might be. However, it is beyond dispute that state laws and state court decisions which are repugnant to the Constitution of the United States or a federal extradition statute cannot stand. *Application of Middlebrooke*, 88 F. Supp. 943 (S.D. Cal., 1950), reversed on other grounds, 188 F.2d 308 (1951), certiorari denied, 342 U.S. 862 (1951); *Smith v. State of Idaho*, 373 F.2d 149 (9 Cir., 1967), certiorari denied, 388

U.S. 919 (1967); *Walden v. Mosley*, 312 F. Supp. 855 (N.D. Miss., 1970). While Nevada state laws dealing primarily with procedural matters undoubtedly come into play during the attempted extradition of the Petitioner, the questions presented by his petition to this Court are unquestionably federal in nature.

Respondent also contends that Petitioner did not properly raise any federal questions in the state courts. The short answer to this claim is that Petitioner was never given the opportunity to raise such questions. At page 3 of its brief, Respondent claims that the Petitioner never "formally" moved the Nevada Supreme Court for briefing by the parties. The fact is that Petitioner twice asked the Nevada Supreme Court, in writing, to permit briefing of the appeal and was rejected each time. Printed as Appendix A hereto is an affidavit of Richard W. Meyers, Petitioner's Nevada attorney, detailing Mr. Meyers' efforts to secure for the Petitioner the opportunity to brief his case in the Nevada Supreme Court. One of the three attachments to that affidavit, also printed in Appendix A, is a letter opposing Mr. Meyers' request signed for the Attorney General of Nevada, who is now on the brief for Respondent.

In *Groendyke Transport, Inc. v. Davis*, 406 F.2d 1158 (5 Cir., 1969) it was stated:

> "The requisites of that portion of due process described as 'hearing' are satisfied by providing the parties with the opportunity of affirmatively advancing argument with supporting authority and a like opportunity for response and counter-argument by the adversary. This may be done by briefs without oral argument." (406 F.2d at 1162).

The Nevada Supreme Court's reversal of the decision below without affording Petitioner an opportunity to be heard by brief violated due process of law.

Respondent argues that, "looked at broadly" (Brief in Oppositon, p. 7), this case is not of sufficient gravity to merit review by this Court, and is not of recurring significance. It is difficult for the Petitioner to look at this case broadly, however, since his life is at stake. In any event, the Petitioner submits that the situation presented in this case is not as unusual as Respondent would have it appear, and that on the contrary, it occurs fairly frequently in the courts. What is unusual is the conduct of the state courts involved, which, apart from the District Court of Nevada, have shown so little regard for the fundamental rights of the Petitioner. That is a reason for this Court to grant review, not deny it.

At page 8 of its brief, Respondent states that it is well settled that a person who is unable to appear in the demanding state at the time of sentencing because of a medical condition is a "fugitive" within the meaning of the extradition laws, citing *Hogan v. O'Neill,* 255 U.S. 52 (1920). The statement is inaccurate and the citation misleading. The *Hogan* case did not involve a defendant suffering from a medical disability. Moreover, far from being well settled, Petitioner believes the question has never been ruled upon. Petitioner is unaware of any case, state or federal, where a person physically incapacitated and thus unable to voluntarily return to the demanding state was found to be a "fugitive from justice" and subjec to immediate extradition.

Petitioner respectfully submits that the important federal questions presented by this case warrant the grant of certiorari. As the attachments to this Reply show, Petitioner has repeatedly attempted to brief the case in the Nevada

Supreme Court, without success. However, Petitioner realizes that the Court may still prefer to have the Nevada Supreme Court rule on these questions before considering the case. Accordingly, the Court may wish to remand the proceeding to the Nevada Supreme Court for full briefing and decision on all aspects of the case prior to review in this Court. In that event, the Court is respectfully requested to grant certiorari and retain jurisdiction over the case in order that Petitioner will not again be subject to immediate extradition upon the decision of the Nevada Supreme Court, should the present decision be reaffirmed.

WHEREFORE, the premises considered, the Court is respectfully requested to grant the writ of certiorari in this case.

Respectfully submitted,

Gerald S. Rourke
WELCH & MORGAN
300 Farragut Building
900 17th Street, N.W.
Washington, D.C. 20006
Attorney for the Petitioner

APPENDIX A

AFFIDAVIT OF RICHARD W. MYERS

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

RICHARD W. MYERS, Esquire, being first duly sworn, deposes and states as follows:

That your affiant is an attorney at law duly licensed to practice law in the State of Nevada and is associated with the law firm of BECKLEY, SINGLETON, DE LANOY & JEMISON, Chartered, Nevada attorneys for EUGENE CHARLES RANDONO.

That on September 12, 1973, the Honorable Carl J. Christensen, District Judge for the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, granted a Writ of Habeas Corpus releasing Randono, which order was reduced to written form, signed and filed on September 19, 1973.

That thereafter, and on October 1, 1973, a Notice of Appeal signed by William E. Isaeff, Deputy Attorney General for the State of Nevada, appealing said order was filed in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark.

That thereafter, and on or about October 24, 1973, your affiant learned that the Nevada Supreme Court had elected to take the matter under submission and decide the appeal without the benefit of briefs or oral argument.

That on October 24, 1973, your affiant requested the Clerk of the Nevada Supreme Court for the opportunity to file briefs and have a hearing before the Nevada Supreme Court in a letter, a photocopy of which is attached hereto as Exhibit A.

That thereafter, and on October 29, 1973, William E. Isaeff, Deputy Attorney General of Nevada, sent to the Nevada Supreme Court a letter opposing your affiant's request for briefing and hearing, a photocopy of which is attached hereto as

Exhibit B.

That on November 5, 1973, your affiant met with the Honorable Gordon Thompson, Chief Justice of the Nevada Supreme Court, in the presence of William E. Isaeff, Deputy Attorney General of Nevada, in the Honorable Gordon Thompson's chambers in Carson City, Nevada. That in said conference your affiant renewed the request for briefing and hearing.

That on or about November 6, 1973, your affiant was advised that the Honorable Gordon Thompson, Chief Justice of the Nevada Supreme Court, had taken the matter under submission.

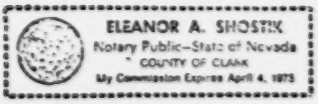
That on November 6, 1973, your affiant dispatched a telegram directed to the Honorable Gordon Thompson, Chief Justice of the Nevada Supreme Court, requesting the opportunity for briefing, a true and correct copy of which is attached hereto as Exhibit C.

Further affiant sayeth not.

Richard W. Myers
RICHARD W. MYERS

Subscribed and sworn to before
me this 4th day of April, 1974.

Eleanor A. Shostik
Notary Public.



October 24, 1973 Las Vegas

AIRMAIL - SPECIAL DELIVERY

C. R. Davenport, Clerk
Supreme Court of Nevada
Carson City, Nevada 89701

Re: State v. Randano
Supreme Court No. 7503

Dear Mr. Davenport:

Pursuant to our telephone conversation of this date, Respondent Randano hereby requests the Supreme Court to set a time for briefs and a hearing in the above-entitled matter.

This request is based upon the fact this case involves a unique factual background and complex issues of law. It is submitted that the Supreme Court will better be in a position to properly decide this appeal with the benefit of briefs and a hearing.

Very truly yours,

PECKLEY, DE LANOY & JEMISON,
Chartered

Richard W. Myers

RWMice
cc: William Isaeff, Deputy Attorney General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CARSON CITY 89701

ROBERT LIST
ATTORNEY GENERAL

October 29, 1973

Mr. C. R. Davenport
Clerk
Supreme Court of Nevada
Carson City, Nevada 89701

Re: State vs. Randono,
Supreme Court No. 7503

Dear Mr. Davenport:

The undersigned has received a carbon copy of a letter sent to you by Richard W. Myers, Esq., attorney for Eugene Charles Randono in the above-captioned appeal.

The State of Nevada wishes to go on record as opposing the request by Mr. Myers that the Supreme Court consider this case as requiring the benefit of a complete brief and an oral hearing. It is the position of the State of Nevada that this particular habeas corpus appeal is clear on the face of the record which is now before the Court.

The rules of law governing habeas corpus hearings are few in number and unusually clear in their direction. The factual background in which this case was presented to the Eighth Judicial District Court is fully set out in the transcript of the proceedings below which has been made a part of the Record on Appeal. Therefore, this office can see no reason for any delay.

The State would respectfully urge the Court to continue handling the appeal of this matter in an expeditious fashion, which is the course we have previously been advised the Court is presently taking.

Sincerely,

ROBERT LIST
Attorney General

By William E. Isaeff
William E. Isaeff
Deputy Attorney General

WEI/cw
cc: Richard W. Myers, Esq.

EXHIBIT B

T E L E G R A M

November 6, 1973

The Honorable Gordon Thompson
Chief Justice
Nevada Supreme Court
Carson City, Nevada

Re: Sheriff, Clark County, Nevada v. Eugene Charles Randono, No. 7503

We understand that the Court, pursuant to its own Rule 2, has denied Respondent the opportunity to submit briefs and to permit oral argument in the above entitled matter.

We are required to raise constitutional issues at the earliest possible moment. Respondent contends that the denial of an opportunity to file briefs constitutes a denial of due process under the Fourteenth Amendment of the United States Constitution, and cites to the Court the case of Groendyke Transport, Inc. v. Davis, 406 F.2d 1158 (5th Cir. 1969), wherein the court describes the limits of the exercise of Rule 2 of the Federal Rules of Appellate Procedure, which is identical to Rule 2 of the Nevada Rules of Appellate Procedure.

It is submitted that the minimum requirements of due process are satisfied only by providing the parties with the opportunity of affirmatively advancing arguments with supporting authorities, and a like opportunity for response and a counter argument by the adversary.

We concede that this may be done by briefs without oral argument; and further concede that the court may shorten the time for briefing and response.

Richard W. Myers
Beckley, DeLanoy & Jemison,
Chartered
Vegaslaw

BILL TO: Beckley, DeLanoy & Jemison, Chartered
1000 First National Bank Building
Las Vegas, Nevada
385-3373

EXHIBIT C